



SDMS Doc ID 2040103

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF:

LEVIATHAN MINE
ALPINE COUNTY, CALIFORNIA

REGIONAL WATER QUALITY
CONTROL BOARD, LAHONTAN
REGION, STATE OF CALIFORNIA

FOURTH MODIFICATION TO THE
ADMINISTRATIVE ABATEMENT
ACTION OF JULY 19, 2000

U.S. EPA Region IX
CERCLA
Docket No. 2004-28

Proceeding under Section
106(a) of the Comprehensive
Environmental Response,
Compensation, and Liability
Act, as amended, 42 U.S.C. § 9606(a).

I. INTRODUCTION AND JURISDICTION

1. On July 19, 2000, the United States Environmental Agency, Region IX ("EPA") issued an Administrative Abatement Action ("Administrative Action") which provided for the performance by the California Regional Water Quality Control Board, Lahontan Region (the "LRWQCB") of a Removal Action described in the Removal Action Memorandum dated July 19, 2000 ("2000 RAM") for certain property located in Alpine County, California known as the Leviathan Mine (the "Site"). This Administrative Action was issued pursuant to the authority vested in the President of the United States by section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606(a) as amended ("CERCLA"), and delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, as amended by Executive Order No. 13016, August 30, 1996, 61 Federal Register 45871, further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-B and further redelegated by Regional Delegations dated September 29, 1997.

2. Paragraph 67 of the Administrative Action provides that the Director of the EPA Superfund Division has authority to modify the Administrative Action.

3. In the Modification to the Administrative Action of July 19, 2000, dated July 5, 2001 ("2001 Modification"), EPA modified the Administrative Action pursuant to Paragraph 67 to add a requirement that the LRWQCB also perform a Removal Action at the Site described in the Removal Action Memorandum dated July 5, 2001 ("2001 RAM").

4. In the Second Modification to the Administrative Action of July 19, 2000, dated July 11, 2002 ("Second Modification"), EPA modified the Administrative Action pursuant to Paragraph 67 to add a requirement that the LRWQCB also perform an additional Removal Action at the Site described in the Removal Action Memorandum dated July 11, 2002 ("2002 RAM").

5. In the Third Modification to the Administrative Action of July 19, 2000, dated July 28, 2003 ("Third Modification"), EPA modified the Administrative Action pursuant to Paragraph 67 to add a requirement that the LRWQCB also perform an additional Removal Action at the Site described in the Removal Action Memorandum dated July 28, 2003 ("2003 RAM").

6. To date, the LRWQCB has performed the work required by the Administrative Action and modifications. At this time, EPA and the LRWQCB agree that current circumstances require certain additional changes in the work to be performed, which are stated in a new Removal Action Memorandum and Work Plan submitted thereunder. For that reason, EPA is issuing this Fourth Modification to the Administrative Abatement Action of July 19, 2000 ("Fourth Modification"), to expand the scope of work to be performed to include performance of the new Removal Action Memorandum ("2004 RAM"). This Fourth Modification is issued pursuant to Paragraph 67 of the Administrative Action and section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

II. FINDINGS OF FACT

7. The Findings of Fact stated in the Administrative Action and the previous modifications are incorporated herein by reference, and EPA further finds the following additional facts.

8. Actions taken by the LRWQCB during the last year pursuant to the Administrative Action and 2003 Modification prevented Acid Mine Drainage ("AMD") from flowing out of the storage ponds on-site this year. However, because of ongoing intake into the evaporation ponds, further treatment of AMD in the ponds is necessary to prevent overflows of concentrated AMD from the ponds into Leviathan Creek in the spring of 2005.

9. The decision by EPA on the Removal Action to be implemented by the LRWQCB at the Site this year is embodied in a Removal Action Memorandum, executed in July of 2004 ("2004 RAM"). The LRWQCB had a reasonable opportunity to review and comment on the 2004 RAM pursuant to section 106(a) of CERCLA, 42 U.S.C. § 9606(a), and 40 C.F.R. § 300.500. EPA will provide for public comment pursuant to the procedures set forth in 40 C.F.R. § 300.415(n)(2), which pertains to removal actions where less than six months exists before on-site removal activity must begin. The 2004 RAM is attached as Attachment 1 and is incorporated by reference. The 2004 RAM is supported by an Administrative Record that includes the documents and information upon which EPA based the selection of the Removal Action.

III. CONCLUSIONS OF LAW AND DETERMINATIONS

10. The Conclusions of Law and Determinations stated in the Administrative Action are incorporated herein by reference, and EPA further makes the following Conclusions of Law and Determinations.

11. The hazardous substances contained in the evaporation ponds continue to threaten to be released from the Site into the surface water in the future.

12. The conditions at the Site described in the Findings of Fact above constitute an actual or threatened "release" as defined in section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

13. The actual or threatened release of one or more hazardous substances from the facility may present an imminent and substantial endangerment to the public health or welfare or the environment.

14. The Removal Action required by this Fourth Modification is necessary to protect the public health, welfare, and the environment, and is consistent with the National Contingency Plan and CERCLA.

III. ORDER

15. The provisions of the Administrative Action are incorporated herein and continue in full effect, except that the following modifications shall be incorporated into the Administrative Action. These modifications do not diminish the rights or responsibilities of the LRWQCB under the Administrative Action as issued on July 19, 2000 and modified on July 5, 2001, July 11, 2002, and July 28, 2003.

16. The term "Removal Action Memorandum" shall mean the 2004 RAM, and all attachments thereto.

17. The term "Work" shall mean all activities the LRWQCB is required to perform under the Administrative Action as modified, including all work required for the Removal Action identified by the 2004 RAM and any activities required to be undertaken pursuant to Sections IX, XII, XIV, XVIII, XIX, XX, and XXIII of the Administrative Action. All work shall be performed in accordance with the provisions of Sections IX, XII, XIV, XVIII, XIX, XX, and XXIII of the Administrative Action.

BY: Keith Takata
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DATE: 7-29-04